



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33167002

Date: AUG. 27, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner describes herself as a “new market business strategist” and seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with “extraordinary ability.” *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate “sustained national or international acclaim” and extensively document recognition of their achievements in their fields. *Id.*

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner met one of ten initial evidentiary criteria – two less than needed for a final merits determination. On appeal, the Petitioner contends that she satisfied six other evidentiary criteria.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that she has met two additional evidentiary criteria establishing: participation as a judge of others’ work in the field; and commandment of a high salary in relation to others in the field. We will therefore withdraw the Director’s decision and remand the matter for a final merits determination and entry of a new decision consistent with the following analysis.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that they:

- Have “extraordinary ability in the sciences, arts, education, business, or athletics;”
- Seek to continue work in their field of expertise in the United States; and
- Through their work, would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act. The term “extraordinary ability” means expertise commensurate with “one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Evidence must demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3)(i-x).¹ If a petitioner meets either standard and the other statutory requirements, USCIS must then make a final merits determination as to whether the record, as a whole, establishes sustained national or international acclaim and recognized achievements placing them among the small percentage at their field's very top. *Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010); *see generally* 6 *USCIS Policy Manual* F.(2)(B), www.uscis.gov/policy-manual.

II. ANALYSIS

The record shows that the Petitioner, a Russian native and citizen, earned a master of laws degree from a university in her home country in 2015. She served as acting head of legal services for a government procurement department and executive director of a marketing/advertising firm before co-founding a legal consulting company in Russia in 2021. She serves as the company's chief executive officer (CEO), specializing in helping corporations enter new markets abroad. Now in the United States, the Petitioner states that she seeks to continue working as a new market business strategist.

The record does not demonstrate – nor does the Petitioner assert – her receipt of a major international award. She must therefore meet at least three of the ten lesser evidentiary requirements at 8 C.F.R. § 204.5(h)(3)(i-x).

The record supports the Director's finding that the Petitioner successfully submitted evidence of her authorship of scholarly articles in her field. *See* 8 C.F.R. § 204.5(h)(3)(vi). On appeal, she asserts that she also provided documentation of:

- Her receipt of lesser nationally or internationally recognized awards;
- Published material about her work in her field;
- Her participation as a judge of others' work in the field;
- Original contributions of major significance in the field;
- Her performance in a leading or critical role for organizations with distinguished reputations; and
- Her commandment of a high salary or remuneration in relation to others in the field.

See 8 C.F.R. § 204.5(h)(3)(i), (iii), (iv), (v), (viii), (ix).

A. Judge of Others' Work

This criterion requires "[e]vidence of the [noncitizen]'s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iv). To meet this requirement, a petitioner must not only show their invitation to judge others' work in the same or an allied field, but also their actual participation in that judging. *See* 6 *USCIS Policy Manual* F.(2)(B)(1).

¹ If an evidentiary standard does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

The Petitioner submitted letters from a teacher, university, and law professor stating her service as a jury member at two conferences: the International Conference of Young Scientists, [REDACTED] in 2014; and a 2015 regional university student conference, [REDACTED]

[REDACTED] At the international conference, the Petitioner stated that she helped determine the top student participants, who had to prepare reports on selected topics, present their findings, and answer questions. In the regional conference, participating law students prepared oral and visual presentations on assigned topics and answered audience questions.

The Director found insufficient evidence that the Petitioner's judging activities "relate[] to her field of expertise." We agree that she did not establish the conferences' specific focus on entering new business markets. But this evidentiary criterion permits judging others' work "in the same *or an allied field*." 8 C.F.R. 204.5(h)(3)(iv) (emphasis added). The Petitioner has demonstrated that her jury membership at the two conferences involved judging others' work in international law, a discipline that the record indicates relates to her field of entering new business markets. Thus, contrary to the Director's decision, the Petitioner has met this evidentiary criterion.

B. High Salary or Remuneration

This criterion requires "[e]vidence that the [noncitizen] has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner submitted a copy of a tax certificate listing her 2023 salary as CEO of her legal consulting company as \$284,700. She initially submitted U.S. Department of Labor (DOL) wage data showing that her salary exceeded those in the 90th percentiles for CEOs in the United States and in the [REDACTED] area, where she intends to work. The Director, however, found that the wage data for "chief executives" did not correspond to the Petitioner's stated occupation of "business intelligence analyst."

On appeal, the Petitioner submits evidence that her 2023 salary exceeded the average and high salaries for business intelligence analysts in the United States and the [REDACTED] area. If a petitioner received notice of required evidence and a reasonable opportunity to provide it before the petition's denial, we do not consider evidence submitted on appeal. *Matter of Soriano*, 19 I&N Dec. 464, 466 (BIA 1988). The Director, however, did not notify the Petitioner of the need for additional evidence regarding her salary before the denial. Thus, we will accept her additional wage data evidence on appeal.

A preponderance of the evidence demonstrates the Petitioner's commandment of a high salary in her field. We will therefore withdraw the Director's contrary finding.

C. Remand

The Petitioner has met at least three initial evidentiary criteria. We therefore need not consider additional evidentiary requirements that she claims to satisfy. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

USCIS must now make a final merits determination on the Petitioner's filing. The Director did not make such a finding. Rather than make the determination in the first instance, we will remand the matter.

On remand, the Director must determine whether the Petitioner has sustained national or international acclaim and received recognition for achievements in her field, identifying her as one of that small percentage who has risen to the field's very top. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(2). The Director should consider any potentially relevant evidence of record, even if it does not fit one of the initial evidentiary criteria or was not presented as comparable evidence. *Id.* The petition's approval or denial depends on the evidence's type and quality. *Id.*

ORDER: The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.